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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re ARNOLD SIMON

on Habeas Corpus.

G042253

(Super. Ct. No. 04D000159)

O P I N I O N

Original proceedings; petition for a writ of habeas corpus to challenge an order of the Superior Court of Orange County, Kim R. Hubbard, Judge. Petition granted.

William J. Kopeny & Associates and William J. Kopeny for Petitioner Arnold Simon.

Law Offices of Marjorie G. Fuller and Marjorie G. Fuller for Respondent Debra Simon.

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THE COURT:^{*}

The family law court purported to sentence petitioner Arnold Simon to 40 days in jail on eight counts of contempt for failure to pay spousal support. Given this occurred nearly three weeks *before* the order adjudging him in contempt was entered, the order is clearly void. (*In re Gilreath* (1959) 167 Cal.App.2d 655, 656-657 [trial court powerless to sentence before entry of the order adjudging contempt].) Citing *Gilreath*, we issued an alternative writ but the trial court did not comply. The time within which to file a formal answer has now passed and we have been advised by respondent's counsel that it is uncertain whether a formal answer will be filed. Under these circumstances we perceive no reason to delay resolution of the habeas petition further. Accordingly, the alternative writ is discharged, the petition for writ of habeas corpus is granted, and the trial court is ordered to vacate the sentencing order. No costs are awarded in this proceeding.

^{*} Before Rylaarsdam, Acting P. J., Moore, J., and Fybel, J.